

STATE OF MICHIGAN
COURT OF APPEALS

HAMILTON ROAD PROPERTIES, LLC,

Plaintiff-Appellant,

V

AHMAD HUSSEIN IBRAHIM, ASSET
ACCEPTANCE CORPORATION, EIS
HOLDING, LLC, N F BRADLEY, IV, d/b/a LEE
ACCEPTANCE CORPORATION, NAGY
READY MIX, INC., TALEB & ABDALLAH
HOLDINGS LLC, and TARGET NATIONAL
BANK,

Defendants,

and

HUSSEIN ALI MOHAMAD.

Defendant-Appellee.

UNPUBLISHED

May 20, 2014

No. 313728

Wayne Circuit Court

LC No. 11-004236-CH

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In this action to quiet title to property, plaintiff, Hamilton Road Properties, LLC, appeals by right the order denying its motion for summary disposition pursuant to MCR 2.116(C)(10) and granting summary disposition in favor of defendant Hussein Ali Mohamad¹ pursuant to MCR 2.116(I)(2). We affirm the order denying plaintiff's motion for summary disposition, reverse the order granting summary disposition in favor of defendant, and remand for further proceedings consistent with this opinion.

¹ For ease of reference, plaintiff refers to Hamilton Road Properties, LLC, and defendant refers to Mohamad.

On December 27, 2006, a land contract was executed between Taleb & Abdallah Holdings, LLC (Taleb), Ahmad Hussein Ibrahim, and defendant covering property ultimately operated as a gas station. Taleb transferred its interest to plaintiff. Plaintiff sent notification of its interest² to Ibrahim and defendant and alleged that the men were in breach for failing to meet the terms of the land contract. Plaintiff offered to enter into a lease agreement for the property with Ibrahim and defendant, but the men, through their attorneys, contested the nature of plaintiff's interest and any transfer. To avoid litigation, on February 2, 2009, plaintiff executed a quitclaim deed to EIS Holding, LLC (EIS), an entity with Ibrahim as its representative. Concurrently with the quitclaim deed, a secured promissory note was executed between EIS, Ibrahim, and plaintiff as well as a mortgage. According to plaintiff, Ibrahim was allowed to take the quitclaim deed and the mortgage based on his representations that he would record the documents. However, only the quitclaim deed was recorded on February 10, 2009. The mortgage between plaintiff and EIS was not recorded until March 6, 2009. Ibrahim entered into another mortgage covering the same property with defendant on February 4, 2009. Defendant recorded this mortgage on February 10, 2009, and consequently asserted that his interest had priority over plaintiff's interest. Defendant alleged that he was unaware of Ibrahim's actions.

Plaintiff filed suit, seeking to quiet title to the property as well as alleging claims for breach of promissory note, fraud, and misrepresentation. Defendant filed a motion for summary disposition, but the trial court denied the motion, holding that factual issues were presented. After the court denied a motion to extend the scheduling dates, plaintiff filed a motion for summary disposition. The trial court denied plaintiff's motion for summary disposition, but granted summary disposition in favor of defendant. The trial court held that defendant was a bona fide purchaser entitled to the equitable relief of quiet title. Although there were individual claims such as fraud and misrepresentation alleged in the complaint, the parties indicated that the trial court's ruling closed the case. Plaintiff now appeals.

Plaintiff contends that the trial court erred by concluding that defendant was a bona fide purchaser entitled to equitable relief, and that summary disposition was proper in its favor. We conclude that the trial court erred in granting summary disposition in favor of defendant, but properly denied summary disposition in favor of plaintiff because issues of motive, intent, and credibility exist for resolution by the trier of fact.

A trial court's ruling regarding a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.* "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id.* The

² We acknowledge that there were other deeds and parties involved in the transaction, including Gate Five International and Oakland County Fuels. However, a full delineation of the transfer of all of the interests over time is unnecessary to resolve this appeal.

documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). “The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion.” *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). “The affidavits, together with the pleadings, depositions, admission, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10).” MCR 2.116(G)(5) (Emphasis added).

When ruling on a motion for summary disposition, the court does not assess the credibility of the witnesses. *White v Taylor Distrib Co, Inc*, 482 Mich 136, 142; 753 NW2d 591 (2008). “Summary disposition is suspect where motive and intent are at issue or where the credibility of a witness is crucial.” *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). When the truth of a material factual assertion made by a moving party is contingent on credibility, summary disposition should not be granted. *Id.* at 136. The trial court may not make factual findings or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). It is the function of the trier of fact to resolve issues regarding credibility and intent. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 174; 530 NW2d 772 (1995). When the evidence conflicts, summary disposition is improper. *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003). Inconsistencies in statements given by witnesses cannot be ignored. *White*, 482 Mich at 142-143. When witnesses testify to diametrically opposed assertions of fact, the test of credibility must lie where the system has reposed it — with the trier of fact. *Kalamazoo Co Rd Comm’rs v Bera*, 373 Mich 310, 314; 129 NW2d 427 (1964). Application of disputed facts to the law present proper questions for the jury or trier of fact. *White*, 482 Mich at 143.

A review of the trial court’s ruling reveals that it held that there was “no reason to believe” that Ibrahim would advise defendant of the various transactions. Consequently, the trial court held that defendant prevailed pursuant to the race notice provision of the bona fide purchaser statute, MCL 565.29. However, when the truth of a material factual assertion is contingent on credibility, summary disposition should not be granted. *Foreman*, 266 Mich App at 135-136. Indeed, “where motive and intent are at issue or where the credibility of a witness is crucial,” summary disposition is suspect. *Id.* at 136. Here, Ibrahim obtained the quitclaim deed to the property and the mortgage from plaintiff, but chose to only record the quitclaim deed. Ibrahim did not simultaneously record plaintiff’s mortgage with the deed. Curiously, the quitclaim deed was recorded on the same date as *defendant’s mortgage*. Ibrahim waited nearly a month later, after defendant recorded his interest, to submit plaintiff’s mortgage to the register of deeds.

Furthermore, the trial court’s ruling regarding the race notice statute contradicted its ruling addressing the first motion for summary disposition. At that time, the trial court held that there were factual issues regarding defendant’s knowledge at the time he received his mortgage. Specifically, the trial court cited to the affidavit of Ali Mekdad that attested that defendant knew

of plaintiff's unrecorded first mortgage, but defendant required a higher first priority mortgage on the property. In light of the Mekdad affidavit, a factual issue was presented regarding defendant's knowledge and whether the date of recording the various mortgages was designed to circumvent plaintiff's priority interest. The trial court provided no rationale or change in circumstance to warrant reversal of its earlier factual determination.

Plaintiff contends that defendant cannot prevail because he has unclean hands. "It is well settled that one who seeks equitable relief must do so with clean hands." *Attorney General v PowerPick Player's Club, LLC*, 287 Mich App 13, 52; 783 NW2d 515 (2010). To determine whether a party comes before the court with clean hands, the primary consideration is whether the party sought to mislead or deceive the other, not whether the other party relied upon the misrepresentations. *Stachnik v Winkel*, 394 Mich 375, 387; 230 NW2d 529 (1975). A party who misrepresents the status or intention underlying the purchase of property cannot be said to come before the court with clean hands. *Id.* at 383. In the present case, there was a factual dispute regarding defendant's knowledge and intention with respect to the recording of the documents. Although defendant denied wrongdoing, the affidavit of Mekdad indicated the contrary; that the recording of the mortgages was deliberately designed to deprive plaintiff of its first priority interest. In light of this factual dispute premised on credibility, motive, and intent, *Foreman*, 266 Mich App at 135-136, summary disposition in favor of either party was improper because the issue is one for resolution by the trier of fact, *Triple E Produce Corp*, 209 Mich App at 174.

Finally, plaintiff alleged that that buy-out agreement between Ibrahim and defendant violated the provisions precluding assignment without written notice and establishment of the creditworthiness of the purchaser or assignee. The occurrence of a default or breach of contract presents a question of fact. See *Detroit v Porath*, 271 Mich 42, 54-55; 260 NW 114 (1935); *State-William Partnership v Gale*, 169 Mich App 170, 176; 425 NW2d 756 (1988). Moreover, plaintiff failed to brief the issue of whether a substantial breach occurred and any remedy for the breach. See *Rosenthal v Triangle Dev Co*, 261 Mich 462, 463; 246 NW 182 (1933); *Holtzlander v Brownell*, 182 Mich App 716, 722; 453 NW2d 295 (1990). Under the circumstances, the trial court erred in granting summary disposition in favor of defendant regarding this issue. However, plaintiff also failed to demonstrate that summary disposition was proper in its favor.³

³ We note that the trial court erred by holding that the assignment was not ultimately executed, and therefore, a violation of the assignment provision of the agreement did not occur. The plain language of the contract did not require the execution of a valid assignment, but merely referred to an assignment. See *Greenville Lafayette LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs, neither party having prevailed in full.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood